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## U.S. Department of Justice

United States Attorney  
Southern District of New York86 Chambers Street, 3rd floor  
New York, New York 10007

November 5, 2020

**By ECF and facsimile**The Honorable Colleen McMahon  
Chief United States District Judge  
Southern District of New York  
500 Pearl Street  
New York, New York 10007Re: Schwehel v. Richardson, 17-cv-8541 (CM)

Dear Chief Judge McMahon:

MEMO ENDORSED

This Office represents the government in the above-referenced action. On October 29, 2020, the plaintiff filed a motion for attorney's fees and costs pursuant to the Equal Access to Justice Act ("EAJA"). See ECF No. 50. The government's deadline to file an opposition to that motion is currently November 12, 2020. I write respectfully to request that the Court stay briefing on the EAJA motion pending the Second Circuit's resolution of the separate fee application filed in that court, for the reasons explained below.

On October 29, 2020, the plaintiff filed EAJA fee motions in both this Court and in the Second Circuit. The motion papers are identical in all material respects. In them, the plaintiff has asserted his belief that the Second Circuit should resolve several threshold legal issues in the first instance, which would "expedite proceedings, conserve judicial resources and make the most sense in light of the purely legal question presented[.]" The government agrees and believes that it would be prudent for this Court to hold briefing on the EAJA motion in abeyance pending the Second Circuit's resolution of EAJA motion before that court. Plaintiff's counsel has no objection to this request.

If the Court declines to hold briefing on the motion in abeyance, the government respectfully requests that the Court grant the government a one-week extension of time, from November 12 to November 19, to file its opposition brief. This request is based on the press of business. Aside from my supervisory duties of reviewing other attorneys' work in the Immigration Unit, I have a deadline on Monday to file the government's opposition to the plaintiff's EAJA motion in the Second Circuit, a Rule 30(b)(6) deposition in another case that is expected to go forward at the end of next week, for which a great deal of my time will be spent preparing, and I also have an expedited deadline next Friday to file the government's opposition to a motion in a different case concerning a detained individual (and next week is a four-day week in light of the federal holiday on Wednesday). Thus, if the Court does not grant the government's unopposed request to hold the briefing on the plaintiff's EAJA motion in abeyance

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pending the Second Circuit's resolution of the EAJA motion before that court, the government respectfully requests that the Court grant a one-week extension of time to file its opposition. While plaintiff's counsel does not object to holding briefing in abeyance as noted above, counsel does not consent to this alternative request for an extension of time. However, given the press of business noted above, if the Court does not hold briefing in abeyance, the government would need additional time to prepare its opposition to the plaintiff's motion, and the government reasonably asks only for one additional week.

Accordingly, the government respectfully requests that the Court stay briefing on the plaintiff's EAJA motion pending the Second Circuit's resolution of the separate fee application filed in that court. And if the Court declines to hold the briefing in abeyance, the government requests, in the alternative, that the Court grant the government a one-week extension of time to file its opposition, until November 19. This is the first request for an extension of time to respond to the plaintiff's EAJA motion. And as noted, the plaintiff does not object to holding the briefing in abeyance pending a ruling by the Second Circuit, but the plaintiff would oppose the government's alternative request for an extension of the Court declines to hold briefing in abeyance.

I thank the Court for its consideration of this request.

Respectfully,

AUDREY STRAUSS  
Acting United States Attorney for the  
Southern District of New York

By: /s/ Brandon M. Waterman

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